

Appln No. 09/775,315
Amdt date September 26, 2007
Reply to Office action of June 28, 2007

REMARKS/ARGUMENTS

In the Office action dated June 28, 2007, the examiner objected to the March 30, 2007 amendment to the specification reciting that the lithium nickel cobalt oxides and lithium manganese oxides are not reacted and remain distinct chemical species. The examiner asserts that this amendment introduces new matter. Applicant respectfully disagrees.

As noted in the previous amendment, at page 7, lines 9-22 of the original specification, the lithium manganese oxides and lithium cobalt oxides are described as chemically *bonded*, and the *reaction product* of these two components is described as unwanted. As the *reaction product* is unwanted, the oxides are not reacted, thereby supporting the recitation in the amended specification that the oxides are not reacted. Because the oxides are not reacted, they do not form another species, and therefore remain distinct chemical species. That the distinct chemical species are bonded is clearly supported in the specification, as apparently admitted by the examiner (see page 2 of the Office action in which the phrase "chemically bonded" is not indicated as new matter). Given this disclosure, although the two oxides are *bonded*, they are not reacted, and therefore each remain a distinct chemical species.

That the oxides remain distinct chemical species is further supported by the disclosure at page 6, lines 5-11, which describes a two-component *mixture* of nickel cobalt-based oxides and manganese-based oxides, whereby the two components in the mixture exhibit a synergistic effect by compensating for the disadvantages inherent in each of the individual components. If the two components instead were reacted to form a new product, no such synergistic effect would be realized. Accordingly, the original specification supports the recitation in the amended specification that the oxides are chemically bonded, but are not reacted and remain distinct chemical species. Applicant therefore respectfully requests withdrawal of new matter rejection.

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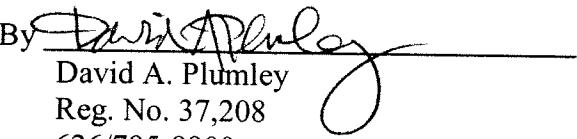
In the Office action, the examiner reinstated the rejection of claim 11 under 35 U.S.C. §103(a) as allegedly obvious over Mayer (U.S. Patent No. 5,783,333). In making this rejection, the examiner focuses on an alleged disclosure in Mayer that lithium manganese oxides and lithium nickel cobalt oxides are bonded together while remaining distinct chemical species. However, in addition to reciting that the oxides remain distinct chemical species, claim 11 also recites that the positive electrode has first and second binders. Mayer fails to teach or suggest such a feature. Rather, Mayer discloses the use of only one binder in the positive electrode. In particular, claim 11 recites a first binder for binding the different oxide species and a separate, second binder for preparing the positive electrode. In contrast, Mayer discloses only a binder for preparing an electrode, and does not disclose a separate binder for bonding two oxide species. See Column 12, line 29 to Column 13, line 6. Accordingly, claim 11 is allowable over Mayer.

Finally, the examiner maintained the rejection of claims 1-4 under 35 U.S.C. §103(a) as allegedly obvious over Pynenburg, et al. (U.S. Patent No. 5,429,890) in view of Hasegawa, et al. (U.S. Patent No. 5,370,948). The examiner asserts that the Declaration under 37 CFR §1.132 filed on March 30, 2007 is insufficient to overcome the rejection because "[t]he ratio '2/8' is not considered representative of a ratio of less than 1:1 as presently claimed." Office action, page 4. Although the examiner recognizes that the 2/8 ratio is in fact less than a ratio of 1:1, the examiner states that this ratio is representative of a ratio of 1:4 and not of a ratio of less than 1:1. In response, applicant notes that the 2/8 ratio, as admitted by the examiner, is indeed a ratio that is less than 1:1. That the ratio is also representative of a ratio of 1:4 (which is also less than 1:1) does not preclude its representation of a ratio of less than 1:1. Given that the 2/8 ratio is less than 1:1, as recited in the present claims, and that an active material including oxides mixed at that ratio exhibit unexpected and desirable results as compared to the ratio of 6/4 (which is greater than 1:1), as indicated in the Declaration, the Declaration is sufficient to overcome the obviousness rejection over Pynenburg and Hasegawa. Accordingly, applicant respectfully requests withdrawal of this rejection.

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Claims 1-4 and 11 remain pending in this application. In view of the above remarks, applicant submits that all of pending claims 1-4 and 11 are in condition for allowance. Applicant therefore respectfully requests a timely indication of allowance. However, if there are any remaining issues that can be addressed by telephone, applicant invites the examiner to contact applicant's counsel at the number indicated below.

Respectfully submitted,
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